

(b) *Pension for survivors*—(1) *Indian war death pension*. A monthly benefit payable by the Department of Veterans Affairs to the surviving spouse or child of a deceased veteran of an Indian war. Basic entitlement exists if a veteran had qualifying service as specified in 38 U.S.C. 1511. Indian war death pension rates are set forth in 38 U.S.C. 1534 and 1535.

(2) *Spanish-American War death pension*. A monthly benefit payable by the Department of Veterans Affairs to the surviving spouse or child of a deceased veteran of the Spanish-American War, if the veteran:

(i) Had 90 days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability service-connected without benefit of presumptive provisions of law, or at time of discharge had such a service-connected disability, as shown by official service records, which in medical judgment would have justified a discharge for disability.

(Authority: 38 U.S.C. 1536, 1537)

(3) *Section 306 death pension*. A monthly benefit payable by the Department of Veterans Affairs to a surviving spouse or child because of a veteran's nonservice-connected death. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(2)(i), (ii), or (iii) of this section; or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for service-connected disability based on wartime service; and

(iii) The surviving spouse or child (A) was in receipt of section 306 pension on December 31, 1978, or (B) had a claim for pension pending on that date, or (C) filed a claim for pension after that date but within 1 year after the veteran's death, if the veteran died before January 1, 1979; and

(iv) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 1541, 1542 or 1543 as in effect on December 31, 1978, and all other provisions of title 38, United States Code in effect on Decem-

ber 31, 1978, applicable to section 306 pension.

NOTE: The pension provisions of title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.)

(4) *Improved death pension, Public Law 95-588*. A benefit payable by the Department of Veterans Affairs to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 1521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(3)(i), (ii), (iii), or (iv) of this section (38 U.S.C. 1541(a)); or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. (The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 1541(a)); and

(iii) The surviving spouse or child meets the net worth requirements of § 3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in §§ 3.23 and 3.24.

(Authority: 38 U.S.C. 1541 and 1542)

CROSS REFERENCES: Section 306 pension. See § 3.1(u). Improved pension. See § 3.1(w). Improved pension rates. See § 3.23. Improved pension rates; surviving children. See § 3.24. Frequency of payment of improved pension. See § 3.30. Relationship of net worth to pension entitlement. See § 3.274.

[44 FR 45931, Aug. 6, 1979, as amended at 56 FR 19579, Apr. 29, 1991; 56 FR 22910, May 17, 1991; 56 FR 25044, June 3, 1991; 56 FR 57986, Nov. 15, 1991; 68 FR 34541, June 10, 2003]

§ 3.4 Compensation.

(a) *Compensation*. This term means a monthly payment made by the Department of Veterans Affairs to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-

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connected death of the veteran occurring before January 1, 1957, or under the circumstances outlined in paragraph (c)(2) of this section. If the veteran was discharged or released from service, the discharge or release must have been under conditions other than dishonorable.

(Authority: 38 U.S.C. 101(2), (13))

(b) *Disability compensation.* (1) Basic entitlement for a veteran exists if the veteran is disabled as the result of a personal injury or disease (including aggravation of a condition existing prior to service) while in active service if the injury or the disease was incurred or aggravated in line of duty.

(Authority: 38 U.S.C. 1110, 1131)

(2) An additional amount of compensation may be payable for a spouse, child, and/or dependent parent where a veteran is entitled to compensation based on disability evaluated as 30 per centum or more disabling.

(Authority: 38 U.S.C. 1115)

(c) *Death compensation.* Basic entitlement exists for a surviving spouse, child or children, and dependent parent or parents if:

(1) The veteran died before January 1, 1957; or

(2) The veteran died on or after May 1, 1957, and before January 1, 1972, if at the time of death a policy of United States Government Life Insurance or National Service Life Insurance was in effect under waiver of premiums under 38 U.S.C. 1924 unless the waiver was granted under the first proviso of section 622(a) of the National Service Life Insurance Act of 1940, and the veteran died before return to military jurisdiction or within 120 days thereafter. (See § 3.5(d) as to Public Health Service.)

(Authority: 38 U.S.C. 1121, 1141)

[26 FR 1564, Feb. 24, 1961, as amended at 38 FR 21923, Aug. 14, 1973; 39 FR 34529, Sept. 26, 1974; 44 FR 22717, Apr. 17, 1979]

§ 3.5 Dependency and indemnity compensation.

(a) *Dependency and indemnity compensation.* This term means a monthly payment made by the Department of

Veterans Affairs to a surviving spouse, child, or parent:

(1) Because of a service-connected death occurring after December 31, 1956, or

(2) Pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(Authority: 38 U.S.C. 101 (14))

(b) *Entitlement.* Basic entitlement for a surviving spouse, child or children, and parent or parents of a veteran exists, if:

(1) Death occurred on or after January 1, 1957, except in the situation specified in § 3.4(c)(2); or

(2) Death occurred prior to January 1, 1957, and the claimant was receiving or eligible to receive death compensation on December 31, 1956 (or, as to a parent, would have been eligible except for income), under laws in effect on that date or who subsequently becomes eligible by reason of a death which occurred prior to January 1, 1957; or

(3) Death occurred on or after May 1, 1957, and before January 1, 1972, and the claimant had been ineligible to receive dependency and indemnity compensation because of the exception in subparagraph (1) of this paragraph. In such case dependency and indemnity compensation is payable upon election.

(38 U.S.C. 1310, 1316, 1317, Public Law 92-197, 85 Stat. 660)

(c) *Exclusiveness of remedy.* No person eligible for dependency and indemnity compensation by reason of a death occurring on or after January 1, 1957, shall be eligible by reason of such death for death pension or compensation under any other law administered by the Department of Veterans Affairs, except that, effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

(d) *Group life insurance.* No dependency and indemnity compensation or death compensation shall be paid to any surviving spouse, child or parent based on the death of a commissioned